

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

PAYNE EXPLORATION CO.,

Plaintiff,

v.

Case No.: CIV-15-818-D

TRIDENT STEEL CORP.;
COMMERCIAL METALS CO.;
and A-JU BESTEEL CO., LTD.,

Defendants.

PLAINTIFF’S APPLICATION FOR LEAVE TO COMMENCE DISCOVERY

Plaintiff Payne Exploration Co. (“Payne”), pursuant to LCvR 26.3(c), applies to the Court for leave to commence discovery. Leave is requested as LCvR 26.3 precludes commencement of discovery while a motion to dismiss is pending. In this case, one Defendant, Trident Steel Corp., has moved to dismiss Payne’s claims asserted under theories of negligence and constructive fraud. Trident has not moved to dismiss, and has filed its answer to, Payne’s claims asserted under theories of products liability, breach of warranties and breach of contract. In support of its Application, Payne states as follows:

1. On July 24, 2015, Payne filed its Complaint in this matter, asserting claims arising from a pipe failure in Payne’s horizontal oil and gas well, under theories of products liability, breach of warranties, breach of contract, negligence and constructive fraud. The pipe was manufactured in South Korea by Defendant A-Ju Besteel Co., Ltd. Defendant Trident sold the pipe to Payne. Defendant Commercial Metals Co. is in the supply chain.

2. Defendants Trident and Commercial Metals Co. filed Answers on August 31, 2015.

3. Defendant A-Ju Besteel Co. (“A-Ju”) is a South Korean corporation. Payne was required to obtain service on A-Ju through the Hague Convention. Payne did not receive proof of service from South Korea until November. A-Ju filed its Answer on December 9, 2015.

4. On August 31, 2015, Trident also filed a Fed. R. Civ. P. 12(b) Motion to Dismiss Count 4 (Negligence) and Count 6 (Constructive Fraud) of Payne’s Complaint.

5. On September 21, 2015, Payne filed its Response to Trident’s Motion to Dismiss.

6. On September 30, 2015, Trident filed its Reply to Payne’s Response to Trident’s Motion to Dismiss.

7. The Court has not ruled on Trident’s Motion to Dismiss. Nor has a Scheduling Conference been conducted.

8. No other claims in the Complaint are subject to any motion at this time and there are no other motions pending.

9. Payne seeks leave to commence discovery on its primary claims in this case, being products liability, breach of warranties and breach of contract. As a result of the depressed oil and gas industry, Payne is concerned that layoffs in the industry may make witnesses difficult to locate.

10. Undersigned counsel has conferred with counsel for Defendants and is authorized to advise that there are no objections to this Motion.

WHEREFORE, Plaintiff Payne Exploration Co. moves the Court for permission to commence discovery as to all named Defendants in this matter.

Dated this 27th day of January, 2016.

/s John R. Bomhoff

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I certify that on the 27th day of January, 2016, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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